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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,421	01/16/2004	Atsushi Ooma	247679US2S CONT	5652

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ALEXANDRIA, VA 22314

EXAMINER

CREPEAU, JONATHAN

ART UNIT	PAPER NUMBER
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1746

DATE MAILED: 08/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/758,421

Applicant(s)

OOMA ET AL.

Examiner

Jonathan S. Crepeau

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 2 is/are allowed.
- 6) ☒ Claim(s) 3, 4 and 6 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/16/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Suggestions*

1. In claim 5, "the first water supply path" lacks antecedent basis in some of the parent claims. Appropriate correction is suggested but not required.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 3, 4, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yasuo et al (U.S. Patent 6,329,094).

The reference is directed to a separator plate for a fuel cell having fuel gas channels (541) on one side thereof and oxidant gas channels (531) on the other side thereof (see Fig. 14). The fuel gas channels are formed substantially linearly in a vertical direction. A water manifold (513) is formed through the separator and is fluidly connected to a channel (slot 516) that is exposed on the oxidant side of the separator (see Fig. 15). The slot corresponds to the claimed "third water supply path." The slot is in communication with through holes (581) that are subsequently in communication with the fuel flow paths via a plurality of fourth water supply paths (561).

Yasuo et al. do not expressly teach that the third water supply path is positioned above a lowermost portion in the vertical direction of the water manifold, as recited in claims 3 and 4.

However, the invention as a whole would have been obvious to one of ordinary skill in the art at the time the invention was made because the artisan would find it obvious to adjust the size or position of the water manifold (513) so that the bottom thereof extends lower than the horizontal plane of the third water supply path. Such a modification would involve only a routine change in size or a rearrangement of the location of the water manifold. It has generally been held that, absent evidence to the contrary, both of these types of modifications are not considered to distinguish over a prior art reference. See MPEP §2144.04. As such, the claimed placement/size of the water manifold in relation to the third water supply path is not considered to distinguish over the reference.

It is further noted that the limitation “water supply means” recited in the claims is not considered to invoke 35 USC §112, sixth paragraph because sufficient structure is subsequently recited that modifies the limitation. See MPEP §2181.

#### *Allowable Subject Matter*

4. Claims 1 and 2 are allowed.
5. Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowable subject matter:

Claims 1 and 2 each recite a plurality of second water supply flow paths that allow communication between the through holes and the first water supply path. Yasuo et al., the closest prior art, does not teach or fairly suggest such a limitation.

Claim 5 recites that a sectional area of the first water supply path branched from the water manifold decreases away from the manifold. Yasuo et al. also does not teach or fairly suggest this feature.

### *Conclusion*

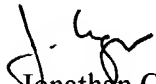
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Crepeau whose telephone number is (571) 272-1299. The examiner can normally be reached Monday-Friday from 9:30 AM - 6:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr, can be reached at (571) 272-1414. The phone number for the organization where this application or proceeding is assigned is (571) 272-1700. Documents may be faxed to the central fax server at (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jonathan Crepeau  
Patent Examiner  
Art Unit 1746  
August 9, 2004